IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

Crl.L.P..No. 230 of 2007()

AGAINST THE ORDER DATED 31/08/2006 IN CC.400/04,404/04,406/04 IN
CC.420/2004 of J.M.F.C.,ETTUMANUR

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PETITIONER/COMPLAINANT

M/S. JASS ROLLER FLOUR MILLS (P) LTD.,
SREEKANDAMANGALAM P.O., ATHIRAMPUZHA,
KOTTAYAM, REPRESENTED BY ITS MANAGER, K.A.MATHAI.

BY ADV. SRI.V.K.SUNIL
SRI.AJEY THOMAS

RESPONDENTS: ACCUSED 1 & 3 & NON PARTY STATE

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1. M/S. SABARI ROLLER FLOUR MILLS (P) LTD., KARETTU, VAMANAPURAM P.O., THIRUVANANTHAPURAM.

2. SYAMALA DEVARAJAN, JOINT MANAGING DIRECTOR, M/S. SABARI ROLLER FLOUR MILLS (P) LTD.

3. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 & R2-BY ADV. SRI.B.S.SIVAJI
R3-BY P.P.SRI.S. DILEEP

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 11/06/2007 ALONG WITH CRL.L.P.NO.232/07 & CON.CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.L.P.NOS.230,232,236 & 237 OF 2007

Dated this the 11th day of June, 2007.

O R D E R

These four special leave to appeals have been filed against the judgments in C.C.Nos.400, 404, 406 and 420 of 2004 on the file of the Judicial Magistrate of First Class- Ettumanoor. The petitioner in these special leave to appeals are one and the same and the respondents are also one and the same. Hence, these petitions are heard together.

2. The case set up by the common petitioner in the four cases is that the respondents/accused and the petitioner/complainant are business firms having business transactions from 2000 onwards. The sale of goods to the respondents/accused was both on credit as well as on cash. All amounts due to the appellant company have been paid occasionally and hence a balance of Rs.3,37,790/= was due from the respondents/accused to the appellant company for which the respondents had issued four cheques bearing Nos.669273,669274,669275 and 669277. Since, these cheques were dishonoured on the ground of insufficiency of fund with the account

of the respondents, a statutory notice regarding dishonour of the cheques has been given and in spite of the receipt of that notice, amount has not been paid back. Hence, the complaint filed.

3. To prove the case against the respondents' company, the appellant company had examined PW1 – the Manager of the appellant company and had produced Exts.P1 to P44. On closing the evidence of the appellant, the respondents were questioned under Section 313 of the Code of Criminal Procedure. Denying the allegations contained in the complaint, the respondents/accused had stated that the cheques in question were not issued as alleged in the complaint whereas the same were issued as security when the business transactions started between the respondents and the appellant. To prove this case, wife of the 2nd accused in the respondents' company has been examined as DW1 and relied on Exts. D1 and D2. The specific case set up by the respondents' company through the evidence of DW1 and the documents furnished is that Exts.P1 to P4 cheques in question were not signed by the 2nd accused namely, the husband of DW1. According to her, the 2nd accused - her husband died two days prior to the last cheque signed and she had stated that those cheques were not signed by the 2nd accused. At the same time, she had a case that those cheques were given to the appellant

company as securities. Appreciating the entire evidence, the trial court found that the appellant company failed to prove the transaction which led to the passing of Excts.P1 to P4. Hence, the respondents/accused were acquitted by the court below. Against that judgment, these petitions for leave to appeal have been filed.

This Court heard the learned counsel appearing on either side and perused the records made available to this Court. The learned counsel appearing for the appellant company submits that the trial court had not appreciated the evidence adduced by PW1- the Manager of the appellant company and the documents produced by the company. After having considered once again the entire evidence and heard the counsel appearing on either side, this Court is of the view that the trial court had appreciated the evidence properly and found that the appellant failed to prove the case against the respondents. The trial court had also found that the evidence of PW1 did not prove that the cheques were signed by the 2nd accused namely, the husband of DW1 in discharge of any amount due from the respondents company. The trial court also found that the appellant company had not produced any account to show the balance, if any due from the respondents' company to the appellant . That apart, PW1 – the Manager had miserably failed to prove that

Exts.P1 to P4 were signed by the 2nd accused in his presence as he has stated that he has not aware whether it was signed by the 2nd accused, the deceased husband of DW1. At the same time, it has come out in evidence that the husband of DW1 was admitted in R.C.C, Trivandrum for treatment and he was bed ridden and he died two days prior to the signing of the last cheque alleged to have been issued by him. Hence, the evidence of DW1 shows that the cheques in question were not issued in discharge of the legally enforcible debt. At the same time, the suggestions made by the respondents would show that the cheques in question were given to the appellant company as security when transactions started between the respondents and the appellant.

In the above circumstances, this Court is fully agreeing with the findings and the judgment of the trial court. Accordingly, these four special leave petitions stand dismissed as merit less.

K. THANKAPPAN, JUDGE.

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